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| APPLICATION NO.           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------|-------------|----------------------|---------------------|------------------|
| 09/975,945                | 10/11/2001  | Charles Paclat       | THEOR-205.1-US      | 9612             |
| 24972                     | 7590        | 03/03/2005           | EXAMINER            |                  |
| FULBRIGHT & JAWORSKI, LLP |             |                      |                     | KHATRI, ANIL     |
| 666 FIFTH AVE             |             |                      |                     | ART UNIT         |
| NEW YORK, NY 10103-3198   |             |                      |                     | PAPER NUMBER     |
|                           |             |                      |                     | 2124             |

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

|                         |                  |  |
|-------------------------|------------------|--|
| Application No.         | PACLAT, CHARLES  |  |
| 09/975,945              |                  |  |
| Examiner<br>Anil Khatri | Art Unit<br>2124 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 28 October 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to consider a request and declaration under 37 C.F.R. 131 submitted on 10/28/2004.

As per applicant's request declaration has been considered but it is not clear and do not sufficiently indicate definite conception of his invention, therefore claims 1-20 are unpatentable over USPN 6,665,861 (Francis et al).

In the interest of compact prosecution the examiner will briefly address applicant's evidence to conception. The affidavit or declaration and exhibits must be clearly explaining which facts or data applicant is relying on to show completion of his invention prior to the particular data. Vague and general statement in broad term about what the exhibit describe a conception "amounts essentially to mere pleading unsupported by proof or a showing of facts" and thus does not satisfy the requirements of 37 CFR 1.131 *In re Borkowski* 505 F2d 713, 184 USPQ 29 (CCPA 1974).

Applicant has failed to disclose a clear explanation of the exhibit pointing out exactly what facts are established and relied on by applicant. Id at 33, see also *In re Harry*, 333 F2d 920, 142 USPQ 164 (CCPA 1964). Additionally, applicant does not declare that what activity was taken place for two months leading up to Oct. 11, 2000 to establish and describe the claimed invention from filling provisional application to August 24, 2000 (cited reference USPN 6,665,861 filling date)?

Applicant is also suggested to correct inventor's name. It represents *et al.* though there is only one applicant on this application.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anil Khatri, Primary Examiner whose telephone number is 571-272-3725. The examiner can normally be reached on M-F 8:30-5:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2124

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ANIL KHATRI  
PRIMARY EXAMINER